IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

HELEN CASTRO BETANCOURT Plaintiff V. **WALMART STORES, INC.;** their unknown **INSURANCE COMPANY I, II & III** unknown **CORPORATIONS AND ENTITIES I, II, III;** their unknown **INSURANCE COMPANIES X, Y & Z;** unknown **INSURANCE COMPANY A; JANE DOE; JOHN DOE;** as well as any Other Joint Tortfeasors. Defendants	**CIVIL NO.** **TORT CLAIM FOR DAMAGES; NEGLIGENCE** **TRIAL BY JURY DEMANDED**

COMPLAINT

APPEAR NOW Plaintiff, **HELEN CASTRO BETANCOURT**, through the undersigned attorney, and hereby state, allege and request as follows:

INTRODUCTION

This is a civil action from damages arising from an injury suffered by plaintiff, Helen Castro Betancourt, while she was walking through an aisle in a Wal-Mart Supercenter store located at 1231 S. Sanderson Ave. Hemet, California, (hereinafter, “Wal-Mart”) around 3:30pm on May 11 of 2013. Plaintiff, a nurse currently unemployed due to injuries sustained, her friend, Juan Olivo, and her sister Geraldine Romám who were with her at time of the incident, assert that while walking Helen unexpectedly fell due to a puddle of water that had accumulated in the aisle floor near the produce area which originated from a display of flowers.

This constitutes a known and preventable hazard to all passersby, customers, among others who frequently visit the store to conduct their shopping. Plaintiff claims damages against Wal-Mart above-mentioned and its insurer, and against any other individual or entity whose identity is still unknown at this time, but who were responsible for the control, conservation, maintenance, preparation and good repair of the store aisle floor, and/or for the removal of any collection of water in Wal-Mart's aisles which supposed a dangerous condition and safety hazard to all passersby, customers, among others.

Finally, plaintiff will prove Wal-Mart created an unreasonable risk of harm, had either actual or constructive notice of the condition creating an unreasonable risk of harm; and the condition caused Plaintiff's fall.

JURISDICTIONAL BASIS AND VENUE

1. Jurisdiction in this case arises under 28 U.S.C. §1332, diversity jurisdiction.
2. Plaintiff is citizen of the United States and domiciles in the state of Puerto Rico, while all Defendants are either individuals who are citizens and domiciles of the state of California or the United States of America or corporations domiciled, incorporated and/or with their principal place of business in California or in the United States of America.
3. The matter in controversy exceeds the sum of **SEVENTY FIVE THOUSAND DOLLARS ($75,000.00)**, exclusive of interest and costs, thus vesting jurisdiction on this Honorable Court pursuant to 28 U.S.C. §1332.
4. This court has jurisdiction pursuant to California's substantive law, Cal. Code. Civ. Proc. Sec. 335.1 which states that the time for commencing actions for personal injury cases is to be filed within two years of the day of the accident. The factual allegations for the instant case occurred on May 11, 2013, thus, vesting jurisdiction to this Honorable Court when filing the complaint within the statutes of limitations of two years, as prescribed under California Law, that is, until May 11, 2015.
5. Moreover, Puerto Rico has approved the "dominant or significant contacts" test for contract and tort actions, Id., at 48 ; Federal Insurance Co. v. Dresser Industries, Inc., 111 D.P.R. 96 (1981); Green

Giant Co. v. Tribunal Superior, 104 D.P.R. 489 (1985); Rodríguez v. Am. Airlines, Inc., 886 F. Supp. 967, 970 (D.P.R. 1995). Evidently, but for the fact that Plaintiff is in Puerto Rico, all the other "significant" contacts point to the application of California law. In particular, California is both the place where the injury occurred, and where the conduct purportedly causing it occurred.

6. As a result, we move this Court to apply California law, thus, vesting jurisdiction to this court for timely filing the instant case, taking into consideration the two year statute of limitations.

7. Venue is proper in the District of Puerto Rico pursuant to 28 U.S.C. §1391(a)(2) since venue shall be determined without regard to whether the action is local or transitory in nature.

8. Venue is also proper in the District of Puerto Rico since Plaintiff and her main witness is domiciled and resides in Vega Alta, Puerto Rico and the Supreme Court has specified that the Plaintiff's choice of forum should rarely be disturbed unless the reasons of transfer are clear and cogent, strongly in favor of defendants. Gulf Oil Corp. v. Gilbert 330 US 501.

9. Venue is also proper in the District Court of Puerto Rico when considering the balance of convenience on the comparative abilities of the parties, the cost of litigation should be borne by the party in the best position to absorb and spread it. In the instant case, considering the defendant, Wal-Mart, is a corporation can more easily absorb the litigation costs in the District Court of Puerto Rico than the Plaintiff burden to litigate in California.

10. Also, venue is proper in the District of Puerto Rico given the fact that the defendant's witnesses are, if not all, employees of Wal-Mart, therefore the convenience of witnesses are given less weight by the court because Wal-Mart can obtain their presence at trial. See 15 Charles Alan Wright, Arthur R. Miller & Edward H. Cooper, Federal Practice *and* Procedure § 3851

11. Finally, venue is also proper in this District when considering the interests of justice. This Court in its own judicial discretion, in a case by case analysis of convenience and fairness will understand that, on the interests of justice, the instant case be tried in this forum and not in another venue.

THE PARTIES

12. Plaintiff **HELEN CASTRO BETANCOURT** (hereinafter referred to as "**HELEN**" or "**Plaintiff**") is of legal age, single, and a citizen and domiciled in the state of Puerto Rico. She is a 58 year-old woman who suffered a devastating fall with her last known address being 588 Segundo Ruiz Belvis, Toa Baja, P.R., 00949.

13. Defendant **WAL-MART STORES, INC.** (hereinafter referred to as, "**WAL-MART**") is a corporation organized and operating, by information or belief, under the laws of the state of Delaware, with its principal place of business in the state of Arkansas. The Wal-Mart store located at 1231 S. Sanderson Ave, Hemet, CA, 92545, is the alleged store where the incident occurred.

14. Defendant **unknown INSURANCE COMPANIES I, II & III**, (hereinafter referred to as "Insurance companies") are unknown insurance companies organized and operating under the laws of a state other than the state of Puerto Rico, with their principal place of business in a state other than Puerto Rico which, by information of belief, each of them provided general liability insurance coverage to the foregoing Defendant Wal-Mart**,** as well to other responsible entities and persons for incidents occurring at the Wal-Mart store located in Hemet California on or about **May 11th, 2013**.

15. Defendant **unknown CORPORATIONS AND ENTITIES I, II, III**, are unknown parent corporate or other business entities or subsidiary corporate or business entities of defendant **WAL-MART,** and other responsible entities and persons, and are corporations or entities organized and existing under the laws of a state other than Puerto Rico.

16. Defendant **unknown INSURANCE COMPANIES X, Y & Z**, (hereinafter referred to as "Insurance companies") are unknown insurance companies organized and operating under the laws of a state other than the state of Puerto Rico, with their principal place of business in a state other than the state of Puerto Rico which, by information of belief, each of them provided general liability

insurance coverage to the foregoing Defendants **CORPORATION AND ENTITIES I, II, III,** as well to other responsible entities and persons for incidents occurring at the Wal-Mart store located in Hemet, California on or about **May 11th, 2013**.

17. Defendant **unknown INSURANCE COMPANY A** is an insurance company presently unknown who is believed to provide general liability insurance coverage to the foregoing Defendants **WAL-MART** and/or **CORPORATION AND ENTITIES I, II, III,** occurring at the Wal-Mart store located in Hemet, California on or about **May 11th, 2013**.

18. Defendants **JANE DOE** and **JOHN DOE** are unknown persons who are fictitiously named herein to be later replaced by their actual names which may become known through further discovery in this litigation, and who may be therefore liable to Plaintiff, in whole or in part, jointly or severally, for the actions herein described and the damages suffered by Plaintiff.

GENERAL ALLEGATIONS

19. Plaintiff went to California during Mother's day week approximately on May 9th, 2013 to visit her ill mother for the last time, knowing she was going to pass away very soon due to health complications such as cirrhosis.

20. On May 11th, 2013, Plaintiff visited the Wal-Mart located at 1231 S. Sanderson Ave, in Hemet, CA, with the purpose of buying a birthday cake for her brother who had his birthday that same day.

21. Plaintiff was accompanied to the store by a very close friend, Juan Olivo, and her sister Geraldine Román.

22. Plaintiff, in company of her friend and sister aforementioned, went directly to the produce area, and as they all were walking towards the produce area, all of a sudden without prior notice, she slipped and fell provoked by a puddle of transparent liquid collected in the floor, which originated from the pots of flowers that were in exhibition as part of the Mother's day weekend.

23. Her sister heard a loud yell and when she turned back saw Helen in a split-awkward position with a lot of pain. Plaintiff tried to get up but she kept on falling and slipping due to the puddle of water in the floor.

24. As just mentioned, Plaintiff fell due to a puddle of water in the floor, which originated from a leakage from the bottom of the flower pots that were near were Plaintiff fell.

25. Overall, Plaintiff fell three times trying to get up, finally at the fourth try her friend, Juan Olivo, grabbed her by the hand, waist and belly to help her stand up. Helen was shocked and horrified by the unexpected incident, which has changed her life ever since.

26. As a consequence of the many falls she endured, Plaintiff suffered lot of pain in her right knee, twisted her right thumb and wrist during the horrific incident.

27. Right after the three falls, employees of Wal-Mart came rushing with towels to dry the area right away and Helen called the Manager to address the situation and make a report of the accident. Once the Manager arrived at the scene, he saw at plain sight the puddle of water collected still visible and gave the Plaintiff the paperwork to fill in the report.

28. Subsequently, the Manager told Helen they would call her if necessary, so she went limping straight to her sister's house and took couple of pills to remediate and endure the profound pain.

29. The next day, the Plaintiff woke up with her right knee and wrist swelled to the point, she decided to attend the ER from the nearest Hospital.

30. She was told by the attending physician she had a bad sprain to her knee, and suggested her to put on a knee brace and wrist support, which she did.

31. The visit to the ER cost the Plaintiff $1,706.60, which she had to pay from her own money since she can't afford medical insurance.

32. The pain continued to worsen to the point she felt the pain irradiate from the lower back to her toes.

33. On May 16, 2013 Helen returned home to Puerto Rico, where she tried performing her work as a nurse at the CDT of Sabana Seca. Her work proved to be impossible to manage due to the everyday pain sustained by the accident.

34. Due to the fall, two days later, on May 18, 2013, she visited her primary physician which prescribed her to take tramadol 37.5 milligrams to remediate the pain.

35. On May 20, 2013, Helen visited a physiatrist, which could only re-visit 2 more times because she could not bear the costs of the private services.

36. Plaintiff had no other option but to request the government's low-rate healthcare system called "Reforma" so she could get finally treatment for her injuries suffered.

37. The approval of the "Reforma" took approximately 2 to 3 month, and 1 more month until an appointment could be finally scheduled on or about September of 2013.

38. Due to the incident, during her treatment so far under the "Reforma" Helen has been under prescribed drugs for 8 months, has had 7 sessions of therapy to her wrist, 8 sessions of therapy to her right leg, injected to her wrist to remediate the pain; and taken MRI and x-rays to her wrist and knee. It is important to note that the "Reforma" only permits 15 therapies per year, so that being said, during the 2014 she exhausted all her available therapies between the knee and wrist, and she is scheduled to receive during 2015 the permitted 15 therapies between her knee and wrist accordingly.

39. Helen hasn't had previous conditions of this kind. Before the accident Helen was a healthy woman who enjoyed working as a nurse. Despite the therapies she's been taking, she can no longer perform the job she loved the most, because the pain in her right wrist prevents her from performing even the most basic nurse obligations.

40. For that reason, plaintiff was forced to end her job as a nurse, hasn't been able to look for future employment or to provide services as a nurse accordingly, and consequently she is currently unemployed receiving only government aids to fulfill her most basic things.

41. Due to Helen's advanced age, the injuries sustained will affect her for years and most likely the rest of her life. She is currently unable to work and perform routine everyday movements without experiencing debilitating pain. Having said that, as a nurse, she is required to stand long periods of time, and consequently is unable to perform this type of work nor is she able to look for this type of work due to her sustained injuries.

42. Among her ongoing symptoms, are, radicular symptoms extending to the right leg into her toes, numbness in 4 toes of her left foot, daily excruciating pain, weakness and discomfort with normal everyday tasks; cannot comfortably sleep, sit, or stand for extended periods of time. In addition, household chores prove to be difficult and pre-accident physical activities are no longer even an option to perform.

43. In addition, all due to the fall, to remediate Helen's daily suffering, the physician have prescribed her to take over twenty-two (22) pills to remediate her pain and suffering.

44. She fears that the long term impact of all those medications will do harm to her overall health and will damage her organs and quality of life.

45. Due to the incident on May 11, 2013, Helen's daily routine has been altered completely. Ever since the accident, her routine consists solely dedicated to try to recover from her pain and suffering due to the severity of the falls sustained.

46. Helen, before the incident on May 11, 2013, was a fully independent, happy and physically active 57 year old lady. Now her normal activities have been diminish to a complete halt because of her extreme pain and suffering.

47. Due to the hard fall on May 11, 2013, Helen had no other remedy, but to settle to an inactive and sedentary lifestyle, because even the simplest task, meant a great deal of pain and anguish, causing her, consequently, to become extremely frustrated, depressed and discouraged.
48. Once again Helen is following thoroughly the prescribed exercises and physiotherapies as appointed, but the progress towards recovery is slow and painful, and has not proven successful.
49. Helen, who turned 58, no longer has the ability to continue her former active, happy and independent lifestyle.
50. The injuries have affected the level of energy, enthusiasm and mobility that she previously brought to her family, friends and most important of all, to herself.
51. It has been almost **two years** since the fall on May 11, 2013, and Helen's pain has not dissipated nor improved, to her disbelief it has worsened.
52. Her pain has spread from her lower back radiating to legs and toes.
53. She is desperate, among other things, to get back to her normal lifestyle doing what she loved the most, being a nurse.
54. She is still suffering from the injuries that have led her to an emotional toll, and is afraid she will not ever recuperate fully.

FIRST CAUSE OF ACTION

55. The factual allegations contained above are restated herein in full.
56. As part of the business of a department store, guests are invited to shop in their stores and, in exchange the customers are supposed to be provided with a safe secure access to the store premises, in a safe and secure environment while they conduct their shopping.
57. Department stores, such as Wal-Mart are held to a stringent standard of care with respect to their guests, which requires them to provide adequate security measures to assure the safety and

security of its guests. As such, it became the duty of Wal-Mart, its agents, employees, subcontractors and servants in its behalf, to exercise all due care and caution for the safety and security of its guests while on its premises, and to hire employees and contract with subcontractors, capable of insuring the safety and security of guests while visiting the department store.

58. On or about May 11, 2013, the Defendants, their agents, servants, and/or employees owned and/or operated the Wal-Mart store located in Hemet, California.

59. On or about May 11, 2013, the Defendants, their agents, servants and/or employees managed and/or maintained the Wal-Mart store located in Hemet, CA.

60. On or about May 11, 2013, the Defendants, their agents, servants and/or employees were responsible for maintaining in reasonable safe conditions the premises and areas of the store, suitable for customers to enjoy safely without the danger of slipping and falling due to puddle of water in the floor provoking a foreseeable slip and fall incident.

61. At all times herein mentioned, it was the duty of the Defendants, their agents, servants, and/or employees, to maintain the premises and areas of the store, in a reasonably safe and suitable condition and in good repair for customers to enjoy.

62. At all times herein mentioned, it was the duty of the Defendants, their agents, servants, and/or employees, to provide a suitable and reasonably safe area, which included mapping or clean any spillage and/or collection of water in the store aisles to reduce any potential injury.

63. On or about May 11, 2013, the Defendants, their agents, servants, and/or employees, **failed** to properly maintain the premises and store aisles, in a reasonably safe and suitable condition and in good repair for customers.

64. On or about May 11, 2013, the Defendants, their agents, servants, and/or employees, **failed** to provide a suitable and reasonably safe store premises, for not preventing foreseeable dangerous

conditions like negligently permitting the accumulation of water in the aisle of the store, which promoted potential injury for customers conducting their shopping.

65. The Defendants, their agents, servants, and/or employees acted negligently, carelessly, and recklessly by failing to properly clean the aisle, thus, not maintaining the premises, in a reasonably safe and suitable condition and in good repair.

66. The Defendants, their agents, servants, and/or employees acted **negligently**, carelessly, and recklessly by failing to provide a safe aisle area at all times for customers to enjoy.

67. The Defendants, their agents, servants, and/or employees acted **negligently** for not preventing the foreseeable dangerous conditions of permitting the collection of water in the floor that promoted potential injury to store customers.

68. On May 11, 2011, the Defendants, their agents, servants and/or employees **breached** their duty to properly maintain the Wal-Mart store, in a reasonably safe and suitable condition and in good repair, and they are, therefore, liable for the damages suffered by Helen.

69. On May 11, 2011, the Defendants, their agents, servants and/or employees breached their duty to Plaintiff by permitting collection of water in the floor, with said breach of duty being the proximate cause of Plaintiffs' injuries.

70. The Defendants, their agents, servants and/or employees failed to address foreseeable risks; the defendant had actual or constructive notice of the dangerous condition that could develop by letting the accumulation of water in the floor to store customers conducting their shopping.

71. Defendants, their agents, servants and/or employees could have reasonably foreseen that the injuries or related harms of plaintiff would result from their omission to mop and/or wipe dry the puddle of water in the store aisle.

72. Defendants, their agents, servants and/or employees failed to maintain the Wal-Mart store in a reasonable and safe condition, even more, when it is known that store customers generally expect

that defendants take all necessary security measures to avoid foreseeable risks and/or dangerous conditions, such as, in this case, wiping dry the puddle of water accumulated in the passage where customers walk through while doing their shopping.

73. Defendants, their agents, servants and/or employees had the duty to maintain Wal-Mart's aisle, where Helen's accident occurred in a reasonably safe and secure condition to avoid the happening of an accident of this nature.

74. Defendants, their agents, servants and/or employees incurred in fault and/or negligence in creating and/or allowing the existence of a dangerous condition on Wal-Mart's floor and they are, therefore, liable for all the injuries and damages suffered by the plaintiff, Helen.

75. Defendants, their agents, servants and/or employees incurred in fault and/or negligence in failing to prevent the dangerous condition of the wet floor that caused the plaintiff falls, even though they knew or should have known of the foreseeable risk of letting such accumulation of a puddle of water in the floor.

76. Defendants, their agents, servants and/or employees knew or should have known of the foreseeable risk and dangerous condition the slippery floor caused by letting the collection of water to store customers.

77. Defendants knew or should have known that a collection of water in the floor due to water leaking from the flower pots was dangerous, as unsuspecting store customers could slip and fall.

78. Defendants knew or should have known that injuries could and can occur to store customers who slipped on their store due to accumulation of water in their aisles.

79. As a direct result of the Defendants' negligent acts or omissions, Helen, slipped on the wet aisle floor, fell to the ground three times, and suffered serious physical injuries as well as mental and emotional pain and suffering.

80. As a direct result of the injuries, Helen has suffered financial hardship and diminished earning power. She is unable to perform her usual duties due to the physical limitations caused by her injuries. Prior to the accident, Helen lost her job and was in the process of aggressively seeking and obtaining employment and/or her services retained. Unfortunately, her injuries has made her nursing job search impossible and put her nursing career to a halt.

81. As a direct result of the injuries, Helen is unable to perform the duties of her line of work directly resulting from the accident.

82. As a direct result of the injuries, Helen, has suffered serious and irreversible financial injury. Her los earning power resulted in approximate $35,000.00 in financial losses. ($10.00 per hour for an 80-hour work week).

83. As a direct result of the injuries sustained, Helen, has been unable to perform routine tasks. She experiences daily excruciating pain, weakness and discomfort with normal everyday movements and activities. She has been prescribe over twenty-two (22) drugs to deal with the pain and suffering she's endure so far since the accident in May 11, 2013.

84. As a direct result from the injuries, Helen has been referred to a psychiatrist to help resolve the anxiety and severe depression caused by her injuries, loss of physical abilities, and inability to seek out and secure a nursing job.

DAMAGES

85. The factual allegations contained above are restated herein in full.

86. As a direct result of the acts or omissions of Defendants, Helen, has suffered damages in the form of physical and mental injuries, mental and emotional anguish, ongoing pain and suffering, and economic losses, due to the injuries she suffered on May, 11, 2013.

87. As a direct result of Defendants' negligent acts or omissions, Helen will require ongoing treatment on her knee and wrist, and continue conservative treatment due to the injuries suffered on May 11, 2013.

88. As a direct result of Defendants' negligent acts or omissions, Helen will require to keep taking her pain medications which will damage her organs in the long run, due to the fall she suffered on May, 11, 2013.

89. As a direct result of Defendants' negligent acts or omissions, Helen has been suffering from sleep deprivation, due to the fall she suffered on May 11, 2013.

90. As a direct result of Defendants' negligent acts or omissions, Helen has undergone physiotherapy, home exercises, pain injections, pain prescription pills, altered her life routine and continued non-surgical care and still continues to have ongoing problems with the pain on her knee, wrist, lower back, due to the fall she suffered on May 11, 2013.

91. As a direct result of Defendant's negligent acts or omissions, Helen has had to settle for a dependent, sedentary, inactive lifestyle, as a result of the injuries suffered on May 11, 2013.

92. As a direct result of Defendants' negligent acts or omissions, Helen will continue to experience mental and emotional anguish, pain and suffering due to the ongoing nature of her injuries.

93. As a direct result of Defendants' negligent acts or omissions, Helen has, and will continue to, experience past and future physical damages, related to but not limited to past and future treatments, medications, and therapies, due to the fall she suffered on May 11, 2013.

94. **Helen's** past and future physical damages, pain and ongoing suffering have a reasonable value of not less than three hundred thousand Dollars ($300,000.00).

95. **Helen's** past and future mental and emotional anguish and distress have a reasonable value of not less than one hundred thousand Dollars ($100,000.00).

96. **Helen's** past and future economic losses, including but not limited to, past and future lost earnings have a reasonable value of not less than two hundred fifty thousand dollars ($250,000.00)

97. Defendants are jointly and severally liable for all damages.

TRIAL BY JURY DEMANDED

98. Plaintiff hereby demands a trial by jury.

WHEREFORE, Plaintiff demand judgment against Defendants jointly and severally, in the amount of no less than **six hundred fifty thousand dollars ($650,000.00)** as well as reasonable attorney's fees, and such further relief as to this Honorable Court may deem just and proper under the law.

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico this 6nd day of May, 2015.

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